doing business within its limits. *Louisville & Nashville R. R.* v. *Kentucky*, 161 U. S. 701. On the other hand the state cannot in its regulation of railroad charges interfere in the rates for transportation between points within and without its own territorial limits. *Wabash, etc., R. R.* v. *Illinois*, 118 U. S. 557. In the case of *Louisville & Nashville R. R.* v. *Eubank*, *supra*, the state regulation of local charges is held invalid because the manner of such regulation will presumably affect the interstate rates of the carrier. Upon principle it would seem clear that the interference with interstate commerce should be very direct in order to set aside a regulation by the state of its domestic concerns. An enforced reduction of local rates will often compel a carrier to raise interstate rates in order to reap the accustomed profit, but such an effect upon interstate commerce would clearly be too remote to constitute an interference. The regulation that the carrier maintain a certain ratio between his state and interstate rates undoubtedly has a more direct effect upon interstate commerce, and judicial opinion may well differ as to whether the effect is sufficiently direct or not.

One consideration tending to negative the assumption that the interstate rate of the carrier will necessarily be affected by the provision in question appears not to have been noticed by the court. If as alleged the Franklin rate is reasonable and the Nashville rate is forced upon the carrier by water competition, it would seem to be a proper case for an application to the railroad commission for permission to maintain the existing rates or at least for relief from the letter of the requirements of the law. It is not to be assumed that such permission will wrongfully be refused. Moreover in case of an arbitrary refusal and the establishment of a local rate that is practically confiscatory, the carrier may avail himself of the Fourteenth Amendment and appeal to the federal courts. If this suggestion is sound it would seem that the assumed directness of the effect of the long and short haul provision upon the interstate rate is not entirely warranted, and that the protection of the carrier lies in the Fourteenth Amendment rather than in the commerce clause of the federal constitution.

UNAVOIDABLE FAILURE OF SUPPLY AS EXCUSE FOR PUBLIC AGENT'S REFUSAL TO SERVE. — Is a corporation, which exercises the right of eminent domain and holds itself out as ready to furnish the public with a certain commodity, justified in refusing to serve new customers on the ground that such additional service would reduce the supply to the prior consumers below their reasonable requirements; or, having a limited supply, is the company bound to divide it equally among all members of the public who may wish to demand a share, regardless of the priority of application? The question in this precise form has not arisen with much frequency, possibly because the public agent in most instances has the ability to increase its supply to meet the demand and under such circumstances is held liable for failure to do so.

In a recent Indiana case a company had been organized for the purpose of furnishing natural gas for fuel to the citizens of Indianapolis. A property owner applied for a connection between her dwelling and the gas main, and the company refused on the ground that through unavoidable causes the supply of gas had failed to such an extent that

there was no more than sufficient for its present consumers. Under these circumstances the court issued a *mandamus* compelling the company to make the connection. *State ex rel. Wood* v. *Consumers' Gas Trust Co.*, 61 N. E. Rep. 674. It is argued that the appellee in consideration of the extraordinary powers granted to it by the state, has undertaken to bring to the community a public benefit; that this benefit is for all alike who may wish to avail themselves of it; that "there can be no such thing as priority or superiority of right among those who possess the right in common;" and that a refusal by the appellee would be unjust discrimination against the relatrix.

It would seem that the court by a recognition of the settled rule in an apparently analogous class of cases might logically have reached a different conclusion. If a railroad, owing to an unusual influx of business, is unable to furnish sufficient cars for handling the freight, it may refuse to receive it without incurring liability. LAWSON, RTS., REM. & PRAC., § 1804. In such cases the carrier is not compelled to give the latest shipper a share of the accommodations and thereby proportionately diminish those of earlier shippers, but is allowed to carry in the order of presentation. Here the courts seem to recognize a priority of right which the principal case denies. The railroad is justified in refusing for the time being because its facilities have without its default become inadequate. In the principal case the failure of supply was likewise unforeseeable. In the one the impossibility is temporary, in the other permanent: a difference in degree, but apparently not a difference in kind. If the excuse is good in the former, it would seem to be good in the latter also.

REDUCTION OF DAMAGES ON ACCOUNT OF BENEFITS. — A rather novel point in the measure of damages has been recently presented. The Acanthus injured another ship in a collision. The liability was admitted, and the injured ship was dry docked for repairs. While in dry dock, the owners improved the opportunity to have her bottom cleaned and painted, and her bilge keels fitted, steps which they had contemplated before the collision but had not decided upon. This in no way interfered with the repairing, and did not detain the ship in dry dock any longer than it would otherwise have remained. Upon receipt of the bill for repairs and dry docking the owners of the Acanthus claimed a reduction of the dock charges on account of the facts above stated. The owners of the injured ship sued, and it was held that no reduction should be made. *The Acanthus*, 112 L. T. 153.

Notwithstanding the seeming fairness of the defendant's claim, there seems to be no ground of *quasi*-contract, on which to allow a reduction in the nature of a counter claim for the benefit of dry docking. There has been no unjust enrichment of the plaintiff at the expense of the defendant, since the defendant has not been compelled to pay any more than he would if the plaintiff had received no benefit. *Ruabon S. S. Co.* v. *London Assurance*, [1900] A. C. 6; KEENER, QUASI-CONT., 361.

There is more force in the argument that the advantage taken of the situation by the plaintiff should go in mitigation of damages. *Cf. Marine Ins. Co.* v. *China, etc., S. S. Co.*, 11 App. Cas. 573. Where a benefit accrues to the plaintiff as a proximate result of a tort, the damages are mitigated. *Luther* v. *Winnisimmet Co.*, 9 Cush. (Mass.) 171. If the own-